

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

JAMES CATE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:02-CV-611
	)	(PHILLIPS/GUYTON)
CITY OF ROCKWOOD, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This case is before the undersigned pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by Order [Doc. 66] of the Honorable Thomas W. Phillips, United States District Judge, for disposition of Plaintiff's Motion to Take Depositions [Doc. 64].

The plaintiff James Cate moves for leave to take the depositions of Ronald D. Higgs, M.D. and Don Brasel in order to perpetuate their testimony for use in the event of further proceedings in this Court. [Doc. 64]. For grounds, the plaintiff argues that he needs to preserve the testimony of these witnesses for trial by taking their depositions now "[b]ecause of the delay to be experienced due to the appeal filed by the defendants." The defendants oppose the plaintiff's motion, arguing that he has failed to make an adequate showing as to why these witnesses' testimony needs to be preserved. [Doc. 65].

Rule 27(b) of the Federal Rules of Civil Procedure allows for the taking of depositions while a case is on appeal upon a showing that there is a danger that testimony will be lost by delay. May v. International Bus. Associates, Inc., No. 85-3732, 1986 WL 16014 (6th Cir.

Apr. 17, 1986), cert. denied, 479 U.S. 834 (1986) (citing Arizona v. California, 292 U.S. 341, 347-48 (1934)). “Mere allegations that witnesses might die or memories might fade are not sufficient to justify the granting of the motion.” Id.

The plaintiff has failed to make a showing that the deposition testimony of Dr. Higgs or Mr. Brasel would be lost if the plaintiff is not permitted to depose them pending appeal. See Cole v. General Motors Corp., No. 87-5966, 1988 WL 76522, at \*6 (6th Cir. July 21, 1988). Accordingly, Plaintiff’s Motion to Take Depositions [Doc. 64] is **DENIED**.

**IT IS SO ORDERED.**

ENTER:

s/ H. Bruce Guyton  
United States Magistrate Judge